
(1988) 09 GUJ CK 0008
In the Gujarat High Court

Vanja Gopalji Damji and Others

APPELLANT

Vs

Gondal Municipality

RESPONDENT

Date of Decision : 07-09-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1989) 1 GLR 175

Hon'ble Judges : R.J. Shah, J

Bench : Single Bench

Judgement

R.J. Shah, J.—In this petition under Article 226 of the Constitution of India, the petitioners have prayed for a writ of mandamus or any other appropriate writ, order or direction, restraining the respondent-municipality from recovering octroi under the residuary clause of Schedule III on ad valorem basis of 2 paise per rupee of the Octroi Rules of Gondal Municipality and also for an injunction against the respondent-Municipality directing it to adjust the deposits made by the petitioners from 1973 to 1979 under the residuary clause of Schedule HI on the basis of item No. 11 of Schedule II of the Octroi Rules of Gondal Municipality and for an order against the municipality to refund the excess amount of deposits to the petitioners from the year 1973 till the filing of the petition.

2. It appears that a notice was issued at the initial stage and in answer to the said notice, an affidavit-in-reply dated 7-9-1979 was filed for the purpose of opposing the petition by the Chief Officer of the respondent-Municipality. Thereafter, on 26-9-1979, rule was issued in the matter. It seems that no further affidavit has been filed on behalf of the respondent after the issuance of the rule.

3. The short facts leading to the petition are that petitioner No. 1 is the proprietor of the business firm known as Vanja Damji Madhavji Weaving Works; petitioner No. 2 is a partner of the firm known as Jayant Weaving Works; petitioner No. 3 is a partner of a business firm known as Vanja Harjivan Dayabhai Weaving Works; petitioner No. 4 is a partner of Vanja Weaving Works; and petitioner No. 5 is the proprietor of the firm known as Vanja Bhimji Dayabhai.

The petitioners allege that they are running separate powerloom factories wherein they manufacture coarse cloth. For the purpose of the said business, petitioners allege that they import cotton yarn manufactured by the spinning mills and the said cotton yarn is used as raw material for the purpose of weaving coarse cloth. Petitioners further state that the cotton yarn imported by them from the spinning mill is not subjected to any further process. The petitioners claim that the cotton yarn, which is not subjected to any further process, is commercially known as cotton yarn. The grievance of the petitioners is that though the respondent-Municipality was levying octroi on the said commodity at 8 paise per 20 kgs. and collecting octroi on the said basis from the petitioners and all other powerloom owners importing cotton yarn within the municipal limits of Gondal municipality till 1973, respondent-Municipality for the first time somewhere in the year 1973 contended that the cotton yarn imported by the petitioners and others was liable to octroi under the residuary clause under Schedule III of the Rules and not under item 11 of Schedule II and under the said residuary clause, the rate of octroi being 2 paise per rupee, the respondent Municipality required the petitioners and others to pay octroi at the rate of 2 paise per rupee and not at the rate of 8 paise per 20 kgs., as was done upto the year 1973. In the present petition, therefore, petitioners have challenged the said levying and collection of octroi duty, contending that the said residuary clause does not apply in the case of the petitioner. In the aforesaid circumstances, the petition has been filed wherein inter alia relief have been claimed as aforementioned.

4. The Octroi Rules applicable to Gondal Nagarpalika have been put on record by the petitioners. The same are Printed Rules. There are Schedule in the said Rules. Though referred to and mentioned in the petition as item No. 11 of Schedule II and item No. 1 of Schedule III, it would seem that the said reference is to item No. 11 of Part II of Schedule I and to Part III of Schedule 1. The actual item No. 11 of Schedule I has no bearing to the facts of the present case. As a matter of fact, the aforesaid Part II and the aforesaid Part III are in the nature of classification of the things mentioned in the respective Part II and Part III. Any reference, therefore, to item No. 11 in this judgment will be considered to be reference to item No. 11 in the aforesaid Part II in the aforesaid Printed Rules. Any reference to Part III in this judgment should be considered to be reference to the items mentioned in the aforesaid Part III in the said Printed Rules. It is clarified that in this petition we are not at all concerned with the contents of Schedule II as mentioned in the said Printed Octroi Rules.

5. It is pertinent to note that in the aforesaid affidavit filed on behalf of the respondent-Municipality for the purpose of opposing the petition, there is a reference to Schedule HI and in paragraph 12 of the said affidavit what has been stated in this connection is as under:

"...and hence the cotton yarn is liable to octroi duty as per Schedule III." A glance at the said Schedule III mentioned on Page 16 of the said Printed Rules

will make it self-evident that the said Schedule III could have no application in the present case, since it does not state anything regarding octroi duty. In the aforesaid circumstances, there is no dispute between the parties that the reference is to the aforesaid Part II and Part III of Schedule I wherein Octroi Rules have been prescribed.

6. It is also pertinent to note that what has been stated in the aforesaid Part HI on Page 10 of the aforesaid Printed Octroi Rules is as under:

In effect, what is stated in Part III is that the rate of 2 paise per rupee would be charged on these items which are shown in Part I and II and which are not shown in exemption list.

7. It is to be appreciated that so far as the aforesaid Part I and II are concerned, distinct items have been mentioned and also the rate of octroi that would be charged on those items. The contents of the said Part III as reproduced hereinabove go to show that for items which are covered in the aforesaid Part I and II, the octroi will be charged at 2 paise per rupee. There is, therefore, a clear inconsistency between Part I and Part II on the one hand and Part HI on the other. If an item is covered either under Part I or Part II, then the rates applicable for octroi would be those mentioned in Part I and Part II. Those items could not be subjected to octroi as stated in Part III, because the contents of Part III and the rate mentioned therein would clearly be in conflict with the rates mentioned in Part I and Part II. It is, therefore, difficult to regard that Part III is a residuary clause. It is not claimed before me on affidavit that it is perhaps a printing mistake inasmuch as instead of printing that the rate mentioned in Part III would be applicable to those items which are not covered in Part I and Part II, it has been mentioned positively that on the items covered in Part I and Part II, the rate of octroi that would be applicable would be 2 paise per rupee as mentioned in the said Part III. In this view of the matter, the claim of the respondent-Municipality in this connection cannot be accepted on a construction of Part III, as it stands in the Printed Octroi Rules.

8. I will now proceed to examine the merits of the said contention on the assumption that the aforesaid is merely a printing mistake in the Printed Octroi Rules. The claim of the petitioners is that the aforesaid entry No. 11 in the aforesaid Part II covers their commodity, namely, cotton yarn. The said entry reads as under:

The aforesaid entry, according to the learned Advocate for the petitioners, means raw cotton yarn and yarn waste. As stated above, the case of the petitioners is that they are getting the yarn from the textile mills and that they are not subjecting the said yarn to any further process. According to the petitioners, such yarn which they purchase from spinning mills is used by them as raw material and in their powerloom factories cloth is woven therefrom. It is, therefore, submitted on behalf of the petitioners that the aforesaid cotton yarn that they receive from spinning mills is used by them as raw material for the

purpose of weaving cloth in their powerloom factories. On behalf of the respondent-Municipality, a distinction is sought to be made between raw cotton yarn and cotton waste. There is no dispute between the parties that the word "Sutar" means "yarn" in English. Considering the aforesaid entry No. 11, it includes two items, namely, raw cotton yarn and yarn waste. There is no dispute between the parties here that the commodity in question is not yarn waste. The dispute between the parties is that petitioners allege that entry covers cotton yarn and so far as respondent is concerned, it wants to label it as raw cotton yarn.

It is difficult to understand the distinction or the difference between the two expressions, namely, cotton yarn and raw cotton yarn. One has to appreciate that what the petitioners import is the item as is delivered by the spinning mill and no further process is applied by them on that item, except that of weaving cloth directly from the said item in their powerloom factories. The respondent has not been able to bring out distinctly and specifically as to what it had in mind when it described the item as cotton yarn or as raw cotton yarn. In the facts and circumstances of the case, it clearly appears that the item that the petitioners are importing is directly and specifically covered by the said entry No. 11 and there is no question of resorting to the residuary clause, namely, Part III of the aforesaid Schedule I. It, therefore, seems that the petitioners are right in their claim that the octroi that can be charged on the aforesaid item that they are importing is at the rate of 8 paise per 20 kgs. and that respondent-Municipality has no right to collect octroi on the said item on the basis that the said item is covered by the aforesaid residuary clause. The petition, therefore, succeeds on the aforesaid count.

9. The learned Advocate for the respondent claimed that the petition should not be entertained, as it is a delayed petition. This contention has been taken in the aforesaid affidavit-in-reply, which was filed for the purpose of opposing the petition. After the Rule was issued, no further affidavit has been filed in this connection. Apart from the aforesaid, in paragraph 6 of the petition, the petitioners have stated as under:

As the disputes between the Municipality and the petitioners were going on since 1973, the Municipality has not adjusted the deposits paid under protest by the petitioners till recently. The Municipality has not finally fully settled and adjusted the deposits paid by the petitioners Nos. 3 and 4 but has partly settled and adjusted some of the deposits paid by the petitioners Nos. 3 and 4 very recently. The Municipality has settled and adjusted the deposits made under protest by the petitioner No. 5 very recently. The petitioners state that the Municipality has adjusted the deposits as if the petitioners were liable to pay octroi under the residuary item Schedule III and not under item No. 11 of Schedule II of the Octroi Rules of the Gondal Municipality and that they have such adjustments on different dates from 27-1-1973.

The aforesaid averments made in the petition have not been countered by an

affidavit after the issuance of the Rule. It would, therefore, seem that the petitioners had paid the amount not only under protest, but were also trying to convince the Municipality that the stand of the Municipality was not correct and further that the Municipality had made adjustments of some of the amounts in the case of some of the petitioners very recently, that is to say, before some time the petition was filed. In the circumstances, there is no substance in this contention raised on behalf of the respondent-Municipality.

10. It was next contended on behalf of the respondent that here was a case where the facts were in dispute. As stated above, no affidavit-in-reply to the petition has been filed pointing out specifically as to what were the disputed questions of facts. Apart from that, it appears that this is a case of construction of an entry found in the Octroi Rules and not a question where basically the facts are in dispute. This submission also on the part of the Municipality is devoid of force.

11. One more submission was advanced on behalf of the respondent based on counts. It was stated that in the entry there was no inference to counts and because there was no reference to counts, the item could not be considered to be falling under the said item No. 11, but should be taken as falling under the said residuary clause. A scrutiny of the Rules do not point in the direction that the rule-making authority had counts in mind when they were prescribing the different rates. It is also to be kept in mind that the entry does not say raw cotton, but the entry says "sutar" i.e. "yarn" and therefore the entry proceeds on the basis that what is subjected to octroi is yarn of whatever counts and not cotton. The submission in this connection is totally misplaced and is also misleading. No other submission was made on behalf of the respondent.

12. In the aforesaid view of the matter, the petition succeeds. The respondent Municipality is restrained from recovering octroi under the aforesaid residuary clause in respect of item covered by entry No. 11 of the aforesaid Part II of the aforesaid Octroi Rules, as the said item falls under the aforesaid entry No. 11 of the aforesaid Part II and does not fall under the residuary clause.

My attention has been invited by the learned Advocate for the petitioners to the order dated 26-9-1979 passed by this Court at the time of issuing rule. Regarding interim relief, it was ordered as under:

Ad interim relief refused on the condition that the difference of octroi duty chargeable according to Item No. 11 of Schedule II and residuary item comprised in Schedule III recovered from the petitioners on import of the material in question will be deposited by the Municipality in a separate account and it will not be utilised or appropriated towards the general revenue of the Municipality. In case the petitioners succeed herein, the said amount will be refunded by the Municipality to the petitioners in accordance with the payment made by each petitioner.

In view of the said order, it is further ordered and directed that the respondent-

Municipality should return to each of the petitioner such amount as has been kept by it in a separate account of the respective petitioner pursuant to me said order on or before 26-9-1988.

13. In view of the fact that petition succeeds, a further order will need A to be passed regarding the amounts paid by the petitioners for the period covered J by the year 1973 upto the year 1979 i.e. upto the date of the filing of the petition. Since the amounts have been paid by the petitioners long back, it will be in the fitness of things to direct in this connection that the amounts that may be required to be returned to the petitioners which have been paid by the petitioners during the period 1973 upto the date of the filing of the petition be adjusted against each of the petitioners towards the future claims against each of the petitioners on the basis that the item falls under Item No. 11 of the foresaid Part II of the aforesaid Octroi Rules.

14 Rule is made absolute accordingly. In the facts and circumstances of the case, there will be no order as to costs.